

REMARKS

I. Formal Matters.

Claims 1 - 12 are all the claims pending in the application.

II. Drawings.

The Examiner objects to Figs. 5A and 5B and asserts that these drawings should be labeled prior art. Replacement Sheet 3 of 4 is attached hereto, which labels Figs. 5A and 5B as “Prior Art.” In turn, withdrawal of the objection to the drawings is respectfully requested and asserted as being proper.

III. Claims.

Claims 1, 2, 3, 4, and 7 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner cites to the term “relatively” in each of the above claims, and asserts that said term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 1, 2, 3, 4, and 7 are amended to require a *first* or a *second* amount of information to be transmitted per unit time corresponding to a first and second data communication sending means, wherein a first amount is greater than a threshold amount and a second amount is less than a threshold. Applicant asserts that relatively large was clearly defined and described as a data rate to which the first data communication sending means would apply and that relatively small was clearly defined and described as a data rate to which the second data communication sending means would apply (page 2, line 19 to page 3, line 5; page 5, line 15 to 20; page 5, line

21 to page 6, line 17). These amendments are made for the purpose of expediting prosecution of the subject application and are not to be construed as an admission of failing to comply with 35 U.S.C. §112, second paragraph. Withdrawal of the rejection of claim 1, 2, 3, 4, and 7 under 35 U.S.C. §112, second paragraph, as being indefinite is respectfully requested and asserted as being proper.

Claims 1 and 9-12 are rejected as being allegedly unpatentable over *Tsutomu* (JP 07-123,039) in view of *Zehavi* (U.S. Patent App. No. 2003/0053432) under 35 U.S.C. §103(a).

Claim 1. The Examiner acknowledges that *Tsutomu* fails to teach changing the transmission method based on the size of the information amount and fails to clearly teach transmitting for a small information spread spectrum (OA page 4). Therein the Examiner relies on *Zehavi* to teach these claim elements (OA page 5; Examiner citing to *Zehavi* at page 8, claim 12). *Zehavi* teaches, “selecting an encoding rate, an amount of data, and a modulation format for a . . . predetermined power level . . .”

In contrast, claim 1 requires, “. . . second communication data sending means for, when said information amount magnitude discrimination means *discriminates that the amount of information to be transmitted is a second amount* [small] . . . wherein . . . the second amount is less than a threshold amount.” *Tsutmo* fails to teach or suggest changing the transmission speed based on the amount of discriminated data. *Zehavi* teaches *selecting an amount of data and selecting a modulation format*. A proper obviousness rejection under 35 U.S.C. §103(a) requires that the references teach or suggest each and every element of the rejected claim. Neither alone, nor in combination, do *Tsutmo* and *Zehavi* teach or suggest changing the transmission method based on an amount of discriminated data and further the same fail to teach or suggest second

communication data sending means for, when said information amount magnitude discrimination means *discriminates that the amount of information to be transmitted is a second amount* wherein the second amount is less than a threshold amount. At least for this deficiency the rejection of claim 1 as being unpatentable over *Tsutomu* in view of *Zehavi* under 35 U.S.C. §103(a), should be withdrawn.

Claims 9-12 are asserted as being allowable at least by virtue of their dependence upon an allowable claim.

Claims 2, and 7-8 are rejected under over *Tsutomu* in view of *Zehavi* as applied to claim 1 and further in view of *Cloutier et al.* (JP 2000-316035) in view of *Rennert et al.* (U.S. Patent Appl. No. 2003/0086503) under 35 U.S.C. §103(a).

Claims 2 and 7-8 are asserted as being allowable at least by virtue of their dependence upon an allowable claim.

Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 3-6 are asserted as being allowable at least by virtue of their dependence upon an allowable claim.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO. 10/506,623

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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